Supreme Court, U.S.
FILED
NOV 26 1980
MICHAEL RODAK, JR., CLERK

80-852
No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CHARLES M. WIESNER,

Appellant,

v.

WILLKIE FARR & GALLAGHER,

Appellee.

ON APPEAL FROM
THE NEW YORK STATE COURT OF APPEALS

JURISDICTIONAL STATEMENT

CHARLES M. WIESNER
1440 54th Street
Brooklyn, N.Y. 11219
Tel. (212) 851-8633

Appellant, Pro Se

November, 1980

QUESTIONS PRESENTED FOR REVIEW

1. The order that "terminated" the Willkie Farr & Gallagher representation of Charles Wiesner "as of date of this decision and order" does or does not finally determine the Willkie Farr motion to be relieved as Charles Wiesner's attorneys within the meaning of the Constitution ?

2. Can Willkie Farr be relieved as Charles Wiesner's attorneys without proof they were such when Charles Wiesner denied with affidavit that Willkie Farr ever represented him and demanded proof ?

3. Can Willkie Farr be relieved as Charles Wiesner's attorneys without an accounting of a $ 10.000.00 retainer when accounting was demanded and according written agreement Willkie Farr was to bill Charles Wiesner monthly, but never did ?

4. Can a never existent representation be judicially "terminated" ?

PARTIES BEFORE N.Y. STATE COURT OF APPEALS

1. CHARLES M. WIESNER [1/]

2. WILLKIE FARR & GALLAGHER [2/]

1/ The original motion of Willkie Farr to be relieved as Charles and Alexander Wiesner's attorneys in N.Y. Supreme Court, Kings County, Special Term, Part I, was titled: Charles Wiesner v. Roth et al. Action No.1, Index No. 7372/78; and Roth v. Alexander Wiesner, Action No. 2, Index No. 25169/78 (App. D). Charles Wiesner retained Willkie Farr on his own behalf and on behalf his 85 year old father, Alexander Wiesner.

2/ Charles Wiesner and Willkie Farr are the only litigants in this dispute.

Pursuant to N.Y. State Court of Appeals Rule 500.9, in lieu of papers in opposition, Willkie Farr filed one copy of its brief in the Appellate Division (App. J).

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* References designated "App." are to Appendices to this Appeal.

TABLE OF CONTENTS

Page

Questions Presented for Review..... i

Parties before N.Y.Court of Appeals.... ii

Table of Authorities..... v

Orders below..... 1

Jurisdiction..... 2

Statutory Provisions Involved..... 2

Statement of the Case..... 3

Reasons for Granting the Appeal.....13

REFUSAL OF THE NEW YORK COURT OF APPEALS TO CONSIDER THE MERITS OF THE CASE THAT PLAINLY AND REASONABLY CLAIMED RIGHTS AND PRIVILEGES UNDER THE CONSTITUTION IS REPUGNANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES.....13

The Issue is of Great Importance To Charles Wiesner, Litigants and All Citizens.....13

Conclusion.....13

Appendix A - Order, N.Y.State Court of Appeals,dated September 4,1980..... 1a

Appendix B - Order, Appellate Division Second Judicicial Dept. N.Y.State Supreme Court dated June 23, 1980..... 1b

Appendix C - Order, New York State Supreme Court, County of Kings, Special Term, Part 1, dated February 29, 1980.. 1c

Appendix D - Willkie Farr & Gallagher affidavit in support of motion to be relieved as Charles Wiesner's attorneys, dated October 19, 1979..... 1d

Appendix E - Charles Wiesner Affidavit in support of cross motion, dated December 11, 1979..... 1e

Appendix F - Appellant's Brief, Appellate Division, Second Department..... 1f

Appendix G - Respondent's Brief, Appellate Division, Second Department..... 1g

Appendix H - Appellant's Reply and Rebuttal Brief, Appellate Division, Second Dept.... 1h

Appendix I - Charles Wiesner Affidavit in support of motion for leave to appeal and Appellant's Brief..... 1i

Appendix J - Willkie Farr & Gallagher letter,dated August 1, 1980..... 1j

Appendix K - Notice of Appeal,dated October 20, 1980..... 1k
Amended Notice of Appeal dated November 25,1980... 3k

TABLE OF AUTHORITIES

Case: Page

Davis v. Vechsler, 1923, 44 S.Ct. 13, 14, 263 U.S. 22, 24, 68 L.Ed. 143..... 13

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

CHARLES M. WIESNER,

Appellant,

v.

WILLKIE FARR & GALLAGHER,

Appellee.

ON APPEAL FROM
THE NEW YORK STATE COURT OF APPEALS

ORDERS BELOW

ORDER, New York State Court of Appeals dated September 4, 1980 (App. A) is unreported.

ORDER, New York State Supreme Court, Appellate Division-Second Judicial Depart-

ment, dated June 23, 1980 (App. B) is unreported.

Order, New York State Supreme Court, County of Kings, Special Term, Part I, W.T.Bellard, Justice, dated February 29, 1980(App. C) is unreported.

JURISDICTION

On September 4,1980, the N.Y.State Court of Appeals entered its order of dismissal (App.A). Timely notice of appeal and amended notice of appeal was filed on October 20 and November 25,1980, respectively (App. K). This Court has jurisdiction to review the judgment of the N.Y. Court of Appeals by appeal pursuant to U.S.C.A. S. 1257(3).

STATUTORY PROVISIONS INVOLVED

The Constitutional rights to adversary procedure, equal protection under the laws, and due process of law implicitly guaranted by the Amendments of the

Constitution.

STATEMENT OF THE CASE

Principally, this case presents the important question of the validity of a state court judgment without adversary procedure.

Secondly, the validity of a state court judgment contrary to fact and law.

In April 1979, Charles Wiesner retained the lawfirm Willkie Farr & Gallagher to stop the cover-up of violations of the Employees Retirement Income Security Act of 1974, the Securities Exchange Act of 1934, and related tax fraud in two civil suits in New York State Supreme Court, County of Kings (Charles Wiesner v. Roth et al. Action No.1, Index No. 7372/78; Samuel Roth v. Alexander Wiesner Action No. 2, Index No. 25169/78)and to

proceed, without further delay, with emphasis re. the federal causes of action in the appropriate federal court.
Willkie Farr received from Charles Wiesner a $ 10.000.00 retainer and were to bill the latter monthly, as per written agreement.

In fact, at no time did Willkie Farr represent the Wiesners, nor did they ever bill Charles Wiesner. Willkie Farr has not done one single act in the interest and on behalf the Wiesners.

However, Stephen W. Greiner, a partner at Willkie Farr, was caught in flagrant acts of fraud, forgery, intentional misrepresentation and conspiracy to continue the cover-up of violations of federal laws, to aid and abet adversaries of the Wiesners to stay in contempt of state court order dated Jauary 9, 1979, and thus deprived the Wiesners of counsel and of

rights and privileges granted by those federal laws the violations of which he helped to cover-up.

Confronted with irrefutably documented facts Stephen W. Greiner admitted the fraud and forgery. Subsequently, with motion and affidavit (App. D) Willkie Farr sought to be "relieved as the Wiesners' attorneys".

With cross motion and affidavit Charles Wiesner rebutted:

"At no time did Greiner and Willkie Farr act as 'our attorneys'. At no time did Greiner and Willkie Farr represent 'our interest'. At no time did Greiner and Willkie Farr act as'our counsel'. Each and every act and omission of Greiner and Willkie Farr in the two state court actions was in representation and on behalf our adversaries. No court of law can legally 'relieve' Willkie Farr as 'our

attorneys', because they never were such, never acted as such.

If Willkie Farr insists to be 'relieved as our attorneys', in spite of my denial under oath they ever acted as such, the Court should order them to produce proof, that is to produce those acts they claimed with affidavit were done in our representation (from which it results clearly who they represent in fact) together with an accounting, and in the absence of proof and accounting deny the Willkie Farr motion and order the restitution of the $ 10.000.00 retainer with interest"(App. E, I).

There is no question that in a bona fide adversary procedure Charles Wiesner had the Constitutional right to demand proof, and moving Willkie Farr, in order to be victorious, had to produce it. Moreover, Charles Wiesner had a right to demand

an accounting in any case, and a fortiori since the written agreement specifies that Charles Wiesner will be billed monthly, but in fact never was.

Willkie Farr refused to produce an accounting and refused to produce as proof those acts they claimed with affidavits were done on the Wiesners' behalf, evidently because these same acts were flagrantly in the interest and on behalf of the Wiesners' adversaries.

The fraud, forgery and intentional misrepresentation by Willkie Farr & Gallagher are irrefutably documented (App.I) But, even if, arguendo, there were no criminal charges against Willkie Farr, the latter would still have had the burden of proof and to be victorious would still have had to produce it since it was demanded repeatedly.

Stated differently, Willkie Farr,

the prepotent 150 member lawfirm with political connections and influence simply ignored the Constitutional demands for proof of unimportant Charles Wiesner, pro se [3/] and so did the subsequent order of Justice William T. Bellard (App.C) that granted the Willkie Farr motion and "terminated" the Willkie Farr representation of the Wiesners "as of date of this decision and order", irrespective whether such representation ever existed in the first place.

The same aforementioned order also declared that, "The cross motion of Charles Wiesner is granted to the extent

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3/ Willkie Farr is the lawfirm that aided fugitive financier ROBERT VESCO to loot $ 60 million from the Fund of Funds Ltd. Recently a federal jury found Willkie Farr liable for 58% of the fault in the Fund's looting in a suit brought by the shareholders.

that:

1. "Willkie Farr & Gallagher are forthwith directed to turn over the files they maintained in connection with their representation of the above named parties to Charles Wiesner". (underscoring added)

2. "That branch of the cross motion seeking the return of the retainer fee paid to the attorneys is remanded to Judge Salvatore DeMatteo, as official referee, to hear and determine what amount, if any, must be returned to Charles Wiesner"

The trouble with grant No. 1 is that the cross motion contains no such demand (App. E), but there is identical offer in the Willkie Farr affidavit in support of the motion (App. D, paragraph 9).

The trouble with grant No. 2, aside the fact that the cross motion demanded proof and accounting and in the absence of

it the restitution of the retainer with interest (App. E), the "termination" of the Willkie Farr representation and the declaration in grant No.1 re. Willkie Farr's "representation of the above named parties" has already prejudiced "what amount, if any, must be returned".

Charles Wiesner's appeal to the Appellate Division (App. F) from the order of Justice Bellard raised the fundamental Constitutional issues of adversary procedure, due process and equal protection under the laws.

Respondent Willkie Farr's brief before the Appellate Division continued to ignore the fundamental issues raised by appeal with egregiously equivocal and spurious arguments(App. G) that were rebutted by Charles Wiesner (App. H).

The Appellate Division affirmed

the order appealed from without opinion (App. B). Charles Wiesner appealed again (App. I). The N.Y. State Court of Appeals dismissed the appeal "upon the ground that the order sought to be appealed from does not finally determine the actions within the meaning of the Constitution" (underscoring added) App. A.

By "actions" the N.Y. Court of Appeals obviously referred to in re. Wiesner v. Roth, Action No. 1, and Roth v. Wiesner, Action No. 2, the title under which Willkie Farr made its motion to be relieved as the Wiesners' attorneys. And in fact, these "actions" are not finally determined within the meaning of the Constitution, but it is pellucidly clear that these "actions" were not before the Court of Appeals. The only action before the Court of Appeals was the appeal against the order that "terminated" the

Willkie Farr representation of the Wiesners "as of date of this decision and order". The finality of said order is clearly irrefutable.

The issues raised before the N.Y. State Court of Appeals, as before the Appellate Division (App. F, H, I) were plainly and clearly rights and privileges (adversary procedure, equal protection under the laws, due process of law) claimed under the Constitution and laws of the United States.

The refusal of the N.Y.State Court of Appeals to consider the merits of the case is repugnant to the Constitution and laws of the United States.

In the familiar words of Justice Holmes, "whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights,

when plainly made, is not to be defeated under the name of local practice" (Davis v. Vechsler, 1923, 44 S.Ct. 13, 14, 263 U.S. 22, 24, 68 L.Ed. 143.)

REASONS FOR GRANTING THE APPEAL

REFUSAL OF THE NEW YORK STATE COURT OF APPEALS TO CONSIDER THE MERIT OF THE CASE THAT PLAINLY AND REASONABLY CLAIMED RIGHTS AND PRIVILEGES UNDER THE CONSTITUTION IS REPUGNANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES.

The issue is of great importance to Charles Wiesner, litigants, and all citizens.

CONCLUSION

The Appeal should be granted.

Respectfully submitted,

CHARLES M. WIESNER
1440 54th Street
Brooklyn, N.Y. 11219
Tel. (212) 851-8633

Appellant, Pro Se

November 1980

APPENDIX

APPENDIX A

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fourth day of September A.D. 1980

PRESENT, HON. LAWRENCE H. COOKE, Chief Judge, presiding.

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2 Mo. No. 875

Charles M. Wiesner,
Appellant,

vs.

Samuel Roth, et al.,
Defendants.

Samuel Roth,
Plaintiff,

vs.

Alexander Wiesner,
Defendant.

Willkie Farr & Gallagher,
Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause

having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the actions within the meaning of the Constitution.

/s/ Joseph W. Bellacosa
Joseph W. Bellacosa
Clerk of the Court

APPENDIX B

E/ms

FRANK A. GULOTTA, J.P.
CHARLES MARGETT
FRANK D. O'CONNOR
MOSES M. WEINSTEIN, JJ.

_____ AD2d _____ A - June 3, 1980

178 NE Charles Wiesner, appellant, v Samuel Roth et al., defendants. (Action No. 1)

Samuel Roth, plaintiff, v Alexander Wiesner, appellant; Willkie Farr & Gallagher, respondent. (Action No. 2)

Charles M. Wiesner, Brooklyn, N.Y., appellant pro se.

Willkie Farr & Gallagher, New York, N.Y. (Richard E. O'Connell of counsel), respondent pro se.

Order of the Supreme Court, Kings County

(BELLARD, J.), dated February 29, 1980,

affirmed insofar as appealed from by Charles Wiesner, without costs or disbursements. No opinion.

GULOTTA, J.P., MARGETT, O'CONNOR and WEINSTEIN, JJ., concur.

jm

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on June 23, 1980.

HON. FRANK A. GULOTTA, Justice Presiding,
HON. CHARLES MARGETT,)
HON. FRANK D. O'CONNOR,) Associate
HON. MOSES M. WEINSTEIN,) Justices

Charles Wiesner,

Appellant,

v

Samuel Roth et al.,

Defendants.

(Action No. 1)

Samuel Roth,

Plaintiff,

v

Alexander Wiesner,

Appellant;

Willkie Farr & Gallagher,

Respondent.

(Action No. 2)

Order on Appeal from Order

In the above entitled cause, the above named Charles Wiesner, plaintiff in Action No. 1, and the above named Alexander Wiesner, defendant in Action No. 2, having appealed to this court from portions of an order of the Supreme Court, Kings County, dated February 29, 1980; and the said appeal having been argued by Charles M. Wiesner, appellant pro se and submitted by Richard E. O'Connell, Esq., of counsel for Willkie Far & Gallagher, respondent pro se, due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is

ORDERED that the order insofar as appealed from is hereby

unanimously affirmed, without costs or disbursements.

Enter:

IRVING N. SELKIN
Clerk of the Appellate Division

APPENDIX C

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Centre, Borough of Brooklyn, City and State of New York, on the 29 of February, 1980

P R E S E N T :

HON. WILLIAM T. BELLARD,
Justice

CHARLES WIESNER,

Plaintiff :

-against-

:

SAMUEL ROTH, ROMO PAPER PRODUCTS CORPORATION and R & R REALTY CO., :

Defendants :

Cal. No.
Action No. 1
Index No. 7372/78

(and Action No. 2 under Index No. 25169/78)

The following papers numbered 1 to ___ read on this motion.

Papers Numbered

Notice of Motion-Order to Show Cause and Affidavits (Affirmations) Annexed _____

Answering Affidavit (Affirmation) _____

Reply Affidavit (Affirmation) _____

_____ Affidavit (Affirmation) _____

Pleadings-Exhibits _____

Stipulations-Minutes _____

Filed Papers _____

_____

Upon the foregoing papers, the motion of Willkie Farr & Gallagher, attorneys for plaintiff Charles Wiesner in Action No. 1 and defendant Alexander Wiesner, in Action No. 2, for an order relieving them as attorneys for the abovenamed parties, and the cross motion of Charles

Wienser for orders requiring the attorneys to produce the files they maintained in the above cases and to return the $10,000 retainer fee paid to the attorneys by Charles Wiesner, are consolidated herein and decided as follows:

The motion of Willkie Farr & Gallagher is granted and their representation of plaintiff in Action No. 1 and defendant in Action No. 2 is terminated as of the date of this decision and order.

The cross motion of Charles Wiesner is granted to the extent that:

1. Willkie Farr & Gallagher are forthwith directed to turn over the files they maintained in connection with their representation of the abovenamed parties to Charles Wiesner or to any person designated by him; and

2. That branch of the cross motion seeking the return of the retainer fee paid to the attorneys is remanded to Judge Salvatore DeMatteo, as official referee, to hear and determine what amount, if any, must be returned to Charles Wiesner. The parties to these motions are hereby directed to communicate with the chambers of Judge DeMatteo in Room 467, at phone number 643-5340, and schedule an appropriate hearing date.

Charles Wiesner retained Willkie Farr & Gallagher in April 1979 to represent him and his father in the two cases named in the caption. Those two cases are still in the discovery stage. The attorneys have brought the instant motion as a result of a lawsuit

instituted against them by Charles Wiesner for their alleged malpractice in their representation of the Wiesners.

An attorney may withdraw from a case without his client's permission upon a showing of good cause (Code of Professional Responsibility, DR 2-210[C], EC 2-32; Schwartz v Jones, 58 Misc 2d 998, 999). Wiesner's lawsuit against his attorneys is a sufficiently good cause for them to withdraw from the case. Generally, "a lawsuit by a client against his lawyer may be considered an effective termination of the attorney-client relationship" (US v Birrell, 286 F Supp 885, 896 [D.C.N.Y.]; Costello v Burskin, 58 AD2d 573 [2d Dept]; see also, 3 NY Jur, Attorney and Client, §5 and Formal

Opinions, Committee on Professional Ethics, NYSBA, Opinion 440).

Wiesner's papers upon the instant motions indicate no desire on his part to retain Willkie Farr & Gallagher as his attorneys. Rather, he repeats the charges against these attorneys already asserted in his lawsuit against them. Under these circumstances, it would be pointless to continue an attorney-client relationship which neither party wants.

Willkie Farr & Gallagher shall forthwith serve a copy of this order with notice of entry thereof upon the parties involved herein as well as upon counsel for the other parties in Action No. 1.

E N T E R ,

_____

J.S.C.

APPENDIX D

Affidavit of Stephen Greiner in Support Of (9-13)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

CHARLES WIESNER,	:	(Action No. 1)
Plaintiff,	:	
-against-	:	Index No. 7372/78
SAMUEL ROTH, ROMO PAPER PRODUCTS CORPORATION AND R & R REALTY CO.,	:	AFFIDAVIT
Defendants.	:	

SAMUEL ROTH,	:	(Action No. 2)
Plaintiff,	:	
-against-	:	Index No. 25169/78
ALEXANDER WIESNER,	:	
Defendant.	:	

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

STEPHEN GREINER, being duly sworn,

deposes and says:

1. I am an attorney-at-law duly admitted to the Bar of the State of New York and am a member of the firm of Willkie Farr & Gallagher, attorneys for plaintiff Charles Wiesner in Action No. 1 (the "Wiesner Action") and defendant Alexander Wiesner in Action No. 2 (the "Roth Action"). I make this Affidavit in support of the motion of Willkie Farr & Gallagher for an order relieving it as attorneys for said parties.

2. In the Amended Complaint in the Wiesner Action, Charles Wiesner, as assignee of his father, Alexander Wiesner, asserts seven causes of action. The Amended Complaint alleges, among other things, the upon Alexander Wiesner's retirement in 1974 from Romo Paper Products Corporation ("Romo"),

a corporation in which Alexander Wiesner held at least a 49% interest, he received less than the amount due to him on account of his interest in (a) Romo, (b) the Romo Paper Products Retirement Plan, and (c) R & R Realty Co., a partnership which owns the premises in which Romo conducts its business.

3. The Amended Answer asserts four counterclaims for allegedly defamatory publications made by Charles Wiesner in certain letters written by him to his family and others concerning the conduct of Samuel Roth. The Reply to the Amended Answer alleges the affirmative defenses of truth and privilege.

4. In the Roth Action, plaintiff, Samuel Roth, asserts a claim

against defendant Alexander Wiesner for defamatory matter allegedly contained in a letter written by him to Samuel Roth and his wife. The Answer alleges the affirmative defenses of truth and privilege. There are no counterclaims in the Roth Action.

5. In April, 1979, we were retained as attorneys for these parties. While we represent Alexander Wiesner in the Roth Action, Charles Wiesner retained us on behalf of his father (who is approximately 83 years of age) and is the party with whom this firm has communicated concerning the steps to be taken in these cases.

6. Following our substitution as attorneys, depositions of Charles Wiesner and Alexander Wiesner were

taken and completed. Two sessions of the deposition of Samuel Roth have been conducted. In addition, Roth has produced a substantial number of documents. The deposition of Samuel Roth is to be continued at a later date when certain additional documents are to be produced and when rulings on several objections lodged by Mr. Roth's counsel are to be sought. Moreover, a subpoena duces tecum has been served upon Saul Seewald, who was the accountant for Romo during the relevant period; Mr. Seewald has consented to appear when called upon. Apart from these, no other activity is pending in either of these actions.

7. On September 15, 1979 Charles Wiesner, as assignee of his father, commenced an action pro se in the Southern District of New York against

the firm that formerly represented him and his father in the Weisner and Roth Actions, Rogers Hoge & Hills, an associate of that firm, James N. Blair, Willkie Farr & Gallagher and me (the "Federal Action"). The complaint in the Federal Action is annexed hereto as Exhibit A. Charles Weisner alleges that I and this firm committed various acts of nonfeasance and misfeasance in handling the Weisner and Roth Actions, including (1) serving a Reply to the Amended Answer, which Weisner apparently considers an unnecessary pleading that was served solely to delay the deposition of Roth, Exhibit A ¶¶ 56, 57 (2) adjourning the deposition of Roth, Exhibit A ¶¶ 62, 65, 66, (3) failing to object to questions at the deposition of Alexander Wiesner that Wiesner believed to be

irrelevant; Exhibit A ¶¶ 58, 59, (4) failing to ask questions at the Roth deposition that Wiesner considered "relevant and appropriate," Exhibit A ¶ 62, and (5) allowing the transcript of the Roth deposition to be "grossly doctored" and forging the signature of the court reporter at the end of the transcript, Exhibit A ¶¶ 63, 64,

8. In light of his decision to sue me and this firm based upon our representation of him and his father in this action, it is apparent that it is no longer appropriate for this firm to represent the Weisners. Several months ago I requested Charles Weisner to retain new counsel. He has not indicated that he will do so -- thus making it necessary to file this motion.

9. Willkie Farr & Gallagher does

not exert any lien with respect to its files and will deliver its files in this matter to new counsel designated by Charles Wiesner and Alexander Wiesner or to the Wiesners themselves.

WHEREFORE, your deponent prays that this Court enter an order relieving Willkie Farr & Gallagher as attorneys for Charles Wiesner and Alexander Wiesner, together with such other further relief as this Court may deem just and proper.

/s/ Stephen Greiner
Stephen Greiner

Sworn to before me this
19th day of October, 1979.

/s/ Henry J. Cassidy
Notary Public

APPENDIX E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------x

CHARLES M. WIESNER,	:	Action No. 1 Index No.
Plaintiff,	:	7372/78
-against-	:	
SAMUEL ROTH, ROMO PAPER PRODUCTS CORPORATION, and R & R REALTY COMPANY,	:	AFFIDAVIT IN SUPPORT OF CROSS MOTION
Defendants.	:	

----------x

SAMUEL ROTH,	:	
Plaintiff,	:	Action No. 2 Index No.
-against-	:	25169/78
ALEXANDER WIESNER,	:	
Defendant.	:	

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

CHARLES M. WIESNER, being duly sworn, deposes and says:

1. I am the plaintiff in action no. 1, and my father, ALEXANDER WIESNER, is the defendant in action no. 2.
I make this affidavit in further support of my cross motion and opposition to Stephen Greiner's fraudulent motion and false affidavit with which he and his firm seek to be "relieved" as "our attorneys".

2. At no time did Greiner and his firm act as "our attorneys".
At no time did Greiner and his firm represent our interest.
At no time did Greiner and his firm act as our counsel.
Each and every act and omission of Greiner and his firm in the above-captioned actions was in

representation of the express interests of our adversaries as it results pellucidly clear from the files.

Thus, I reiterate, no court of law can legally "relieve" Greiner and his firm as "our attorneys", because they never were such, never acted as such!

3. If Greiner and his firm seek to be lawfully "relieved" as "our attorneys" they will have to prove they in fact were our attorneys who represented our interests, acted as our counsel, and present an accounting before they are permitted to withdraw. Otherwise each and every attorney in the city could ask this Court to be "relieved" as "our attorneys" and consequently request payment.

For this reason I requested with cross motion and affidavit in opposition that this Court order Greiner and his firm to produce all acts they completed in these actions from which it results flagrantly whom they represent in fact, and whose counsel in fact they are.

WHEREFORE, I pray that this Court enter an order requiring Willkie Farr & Gallagher

1. to show cause they had ever acted in action no. 1 as attorneys representing plaintiff's interests, and in action no. 2 as attorneys representing defendant's interests;
2. to produce the subpoena duces tecum served upon SAUL SEEWALD, and SHOW CAUSE why they did not proceed to

take Seewald's testimony on July 19.1979, nor thereafter; why did not Seewald appear on July 19,1979, nor thereafter; why did not Seewald produce the requested documents on July 19,1979, nor thereafter; why did not Willkie Farr ask for sanctions;

3. to restitute with interest the $10.000 retainer:

4. to produce the transcripts of the Roth depositions, Alexander and Charles Wiesner's depositions, and the bills for the Roth depositions dated June 25 and July 16,1979;

5. that this Court reject the Willkie Farr motion

6. granting reasonable costs and disbursements of this motion, and such

other and further relief as this Court may deem just and proper.

/s/ Charles M. Wiesner
Charles M. Wiesner

Sworn to before me this
11th day of December, 1979

/s/ Olga Zandalasini
Notary Public, State of New York
No. 24-9787393
Qualified in Kings County
Commission Expires March 30, 1980

APPENDIX F

To be argued by
CHARLES M. WIESNER
15 minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND DEPARTMENT

ACTION NO. 1 - INDEX NO. 7372/78

CHARLES WIESNER,
Plaintiff-Appellant,

-against-

SAMUEL ROTH, ROMO PAPER PRODUCTS CORPORATION, and R & R REALTY CO.,

Defendants.

ACTION NO. 2 - INDEX NO. 25169/78

SAMUEL ROTH,
Plaintiff,

-against-

ALEXANDER WIESNER,

Defendant-Appellant,

WILLKIE FARR & GALLAGHER,

Respondent.

Appellant's Brief

CHARLES M. WIESNER
Counsel for Appellant pro se
1440 54th Street
Brooklyn, N.Y.
(212) 851-8633

QUESTIONS PRESENTED

1. Can Willkie Farr & Gallagher be "relieved as plaintiff's attorneys" without any proof they were such, when plaintiff denies they ever represented him, and demands proof ?

2. Can a nonexistent representation be legally terminated ?

3. Was fundamental error committed when the court below ignored the facts, the demands made with cross motion, and the core of controversy ?

PRELIMINARY STATEMENT

When in the caption cited actions commenced plaintiff in action no. 1, and defendant in action no. 2, were allegedly represented by the lawfirm Rogers Hoge & Hills.

In April 1979 plaintiff-appellant retained Willkie Farr & Gallagher to stop the cover-up of violations of the Employees Retirement Income Security Act of 1974, Securities Exchange Act of 1934, and related tax fraud in these actions, and to proceed without further delay with emphasis re. ERISA, SEA, IRS, and related fraud in federal court where they belong.

Willkie Farr received a $ 10.000.00 retainer, and were to bill plaintiff monthly, as it results from the

Willkie Farr letter of April 20, 1979.

In fact, at no time did Willkie Farr represent plaintiff, nor did they ever bill plaintiff, nor did they file in court any act in the above captioned actions.

Willkie Farr has not done one single act in the interest and on behalf of plaintiff.

However, Stephen W. Greiner, a member of Willkie Farr, was caught in flagrant acts of forgery and conspiracy to aid and abet adversaries of plaintiff to stay in contempt of court order of January 9, 1979, to cover-up violations of federal laws, and to deprive plaintiff of privileges and rights granted by federal statutes.

When confronted with irrefutable facts Greiner admitted the forgeries, and subsequently with motion of October 19, 1979, (7-8) and equivocal and specious affidavits (9-13, 46-48) Willkie Farr sought to be relieved as "plaintiff's attorneys".

With cross motion and affidavits (34-45) plaintiff rebutted that Willkie Farr never acted as his counsel, never represented his interests, accordingly demanded that if Willkie Fart insists to be relieved as "plaintiff's attorneys" the court order them to produce produce proof they were such, together with an accounting, and in the absence of proof and accounting deny the motion, and order the restitution of the $ 10.000.00 retainer with interest.

Willkie Farr produced neither proof, nor accounting.

With order entered March 4, 1980 (5-6) the lower court terminated the Willkie Farr representation of plaintiff, irrespective whether ever existed such a representation in the first place.

The appeal is taken from this order.

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* The numbers in parenthesis refer to the page numbers of the record on appeal.

POINT I

FUNDAMENTAL ERROR WAS COMMITTED IN RELIEVING WILLKIE FARR AS PLAINTIFF'S ATTORNEYS WITHOUT ANY PROOF THEY WERE SUCH.

Plaintiff rebutted the Willkie Farr Motion with cross motion and affidavits (34-45).

The gist of plaintiff's rebuttal argument was unequivocal.

A. At no time did Willkie Farr act as plaintiff's counsel, consequently cannot be relieved as such.

B. The fact that Willkie Farr received from plaintiff a $ 10.000.00 retainer means and proves only that they received $ 10.000.00 but not that they honored their

contractual obligations and represented plaintiff's interests.

C. If Willkie Farr insists to be relieved as "Plaintiff's counsel", in spite of plaintiff's denial they ever were such, they will have to produce proof they ever acted as such, i.e., produce the acts they claim were done in plaintiff's interest (9-13).

D. In the absence of proof and accounting the court must deny the Willkie Farr motion and order the restitution of the $ 10.000.00 retainer with interest.

It is evident that any honorable

adversary with a minimum of ethics would have immediately produced these acts as proof that he indeed represented plaintiff.

Willkie Farr ignored plaintiff's demand, because even the acts they claimed were made in representation of plaintiff (9-13), were flagrantly in the interest and on behalf of plaintiff's adversaries, and with these very acts Willkie Farr interfered with the law, aided and abetted plaintiff's adversaries to stay in contempt of court order of January 9, 1979, to cover-up violations of federal statutes, to deprive plaintiff of equal protection under the laws and of privileges and rights granted by the constitution and federal statutes, and to

frustrate adjudication of the case on its merits.

In short, on commission of defendants' counsel, C. Daniel CHILL, who is heavily involved in Brooklyn politics, Willkie Farr has not only taken a dive, but actively worked against the interests of plaintiff, and when filmed and caught in the act demanded to be "relieved as plaintiff's attorneys", and keep the $ 10.000.00 retainer too!

With order entered March 4, 1980, the lower court terminated the Willkie Farr representation of plaintiff, irrespective whether such representation ever existed in the first place.

POINT II

FUNDAMENTAL ERROR WAS COMMITTED IN TERMINATING A NONEXISTENT REPRESENTATION

The termination of a representation implies there was in fact a representation.

Plaintiff denied that Willkie Farr ever represented him.

Thus the burden of proof was on Willkie Farr, and it was demanded loudly and unequivocally (34-45).

Willkie Farr ignored plaintiff's demand to proof they ever represented him, and so did the lower court.

Willkie Farr ignored plaintiff's demand for an accounting, and so did the lower court, though according the retainer agreement signed by Willkie Farr they

were to bill plaintiff monthly.

It is thus irrefutable that in the lower court there was no adversary procedure.

POINT III

FUNDAMENTAL ERROR WAS COMMITTED WHEN THE LOWER COURT IGNORED THE CONTROLLING FACTS, THE DEMANDS MADE WITH CROSS MOTION, AND THE CORE OF CONTROVERSY.

After granting the Willkie Farr motion and "terminating" their representation of plaintiff, as of date of the order, the lower court declared:

> "The cross motion of Charles Wiesner is granted to the extent that: 1. Willkie Farr is directed to turn over the files they maintained in connection with their representation of the above named parties to Charles Wiesner"

It appears that the lower court did not read the cross motion and the supporting affidavits (34-45), for there is no such demand in the cross motion, but there is identical offer in the Willkie Farr affidavit (12,9-13).

The order of the lower court cites the Code of Professional Responsability in stating that:

> "an attorney may withdraw from a case without his client's permission"

but this was not an issue, the issue was, <u>who was the client represented by Willkie Farr, plaintiff Wiesner, or his adversaries</u>?!

The penultimate paragraph of the lower court order states that:

> "Wiesner's papers upon the instant motion indicate no desire on his part to retain Willkie Farr &

> Gallagher as his attorneys.
> Rather he repeats the charges"
> .....
> "Under the circumstances, it
> would be pointless to continue
> an attorney-client relationship
> which neither party wants"

Wiesner's papers indicate no such thing. The lower court's strenuous efforts to befog the issues and to deprive Wiesner of equal protection under the laws, can neither change Wiesner's papers upon the instant motion, nor the irrefutable facts, it only emphasizes the grave and fundamental errors committed.

CONCLUSION

THE ORDER SHOULD BE ANNULLED

Respectfully submitted.

Charles M. Wiesner

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APPENDIX G

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND DEPARTMENT

CHARLES WIESNER, Plaintiff-Appellant, -against- SAMUEL ROTH, et al., Defendants.	:	King's County Clerk's Index No. 7372/78
SAMUEL ROTH, Plaintiff, -against- ALEXANDER WIESNER, Defendant-Appellant. WILLKIE FARR & GALLAGHER, Respondent.	:	King's County Clerk's Index No. 25169/78

BRIEF OF RESPONDENT

QUESTION PRESENTED

Whether the decision of the Supreme Court relieving respondent as attorney for appellant is correct and its order should be affirmed.

PRELIMINARY STATEMENT

This Brief is submitted by respondent Willkie Farr & Gallagher in opposition to the appeal by appellant Charles Wiesner from an Order entered by the Supreme Court of the State of New York, County of Kings, on February 28, 1980, granting the motion of Willkie Farr & Gallagher to be relieved as attorneys for Charles Wiesner and his father, Alexander Wiesner.

COUNTER STATEMENT OF FACTS

This is an appeal from an Order of the Supreme Court, Kings County, (William T. Bellard, J.) relieving respondent Willkie Farr & Gallagher as attorney for appellant Charles Wiesner and for appellant's father Alexander Wiesner. (R. at 5-6).* Appellant, as assignee for his father, Alexander Wiesner, is plaintiff in action no. 1, Wiesner v. Roth (the "Wiesner action") and Alexander Wiesner is defendant in Action No. 2, Roth v. Wiesner (the "Roth action"). Both actions were commenced prior to appellant's retention of respondent in April of 1979. (R. at 18, 24, 11).

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* References are to the Record on Appeal.

Upon its retention, appellant was substituted as counsel in both actions for Rogers Hoge & Hills, which had previously served as counsel for appellant and for his father. (R. at 11).

In connection with appellant's retention of respondent, appellant paid a retainer of $10,000 to respondent. (R. at 3, 5, 28). During the late spring and the summer of 1979, respondent proceeded with pretrial proceedings and discovery in both the Wiesner action and the Roth action. (R. at 11-12, 27-29). In September of 1979, appellant Wiesner commenced an action in United States District Court for the Southern District of New York (the "federal action") against respondent, charging that it had engaged in a variety of misfeasance and malfeasance during

the course of its five month tenure as appellant's attorney. (R. at 14-33). Also named as defendants in the federal action were the Rogers firm, appellant's former counsel, and James Blair, an associate of the Rogers firm. A major theme of appellant's federal action, as of his papers in this appeal and in the court below, is the baseless accusation that respondent betrayed him and agreed to work for the interests of his adversary. (R. at 27-33, 3-4, 37-40, 43-44).

Subsequent to the commencement of the federal action, respondent moved in Supreme Court to be relieved as attorney for appellant and for his father. (R. at 7-8). Appellant responded by opposing respondent's application to be relieved and by making a cross motion seeking, inter alia, return of

his $10,000 retainer with interest and production of the transcripts of the depositions of appellant and his father, as well as of Samuel Roth, who is a defendant in the Wiesner action and the plaintiff in the Roth action. (R. at 34-35).

By Order dated February 28, 1980, the Supreme Court, Justice Bellard sitting, granted respondent's motion and relieved respondent as counsel for appellant and for his father. With respect to Wiesner's cross motion, the Court (1) referred that branch of the cross motion seeking return of the $10,000 retainer to a referee for hearing and determination, and (2) directed that respondent turn over its files in connection with the Wiesner action and the Roth action (which files include the deposition

transcripts which appellant specifically sought) to appellant. (R. at 5-6). Respondent has not appealed from that portion of the Order which directs a hearing before a referee on the issue of the retainer fee, nor that which directs that it turn over its files to appellant.

In his Memorandum Order, Justice Bellard found that appellant had retained respondent Willkie Farr & Gallagher, that appellant had sued respondent in federal court, and that appellant's papers "[i]ndicate no desire on his part to retain Willkie Farr & Gallagher as his attorneys." The Court concluded that "Wiesner's lawsuit against his attorneys is a sufficiently good cause for them to withdraw from the case." (R. at 6).

ARGUMENT

THE DECISION OF THE SUPREME COURT RELIEVING RESPONDENT AS ATTORNEY FOR APPELLANT IS CORRECT AND ITS ORDER SHOULD BE AFFIRMED

The decision below incorporates findings that respondent was retained by appellant to represent him and his father, that appellant has commenced a suit in federal court against respondent, and that appellant has indicated no desire that respondent continue as his attorney. Relying on settled authority that an attorney may withdraw from a case without his client's permission where good cause is present, and that a client's suit against his attorney constitutes such good cause, the Court granted respondent's application to be relieved. See, Order of Justice Bellard (R. at 5-6).

Both the Court's factual findings and its legal conclusion are amptly warranted. That respondent was retained by appellant is set forth in the affidavit of Willkie Farr & Gallagher partner Stephen Greiner, (R. at 10-11), in appellant's pre-argument statement (R. at 3), in paragraph 55 of appellant's complaint in the federal action (R. at 28), and in paragraph 3 of appallent's affidavit in support of his cross motion (R. at 37). That appellant has sued respondent is obvious from appellant's complaint (R. at 14-33). That appellant has no desire to continue the attorney-client relationship is self-evident.

The Order below does nothing more than recognize the fact that an attorney-client relationship existed and that appellant's suit against

respondent constitutes good cause for terminating such relationship. Whatever claim appellant might have to the return of his retainer -- and respondent contends that such claim is without merit -- has been preserved by the Court's reference of such claim to a referee to hear and determine. Appellant's appeal is without foundation and should be denied.

CONCLUSION

THE ORDER BELOW SHOULD BE AFFIRMED.

Respectfully submitted

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Richard E. O'Connell

Of Counsel

APPENDIX H

To be argued by:
CHARLES M. WIESNER
Time: 15 minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND DEPARTMENT

ACTION NO. 1 - INDEX NO. 7372/78

CHARLES WIESNER,

Plaintiff-Appellant,

against

SAMUEL ROTH, et al.,

Defendants.

ACTION NO. 2 - INDEX NO. 25169/78

SAMUEL ROTH,

Plaintiff,

against

ALEXANDER WIESNER,

Defendant-Appellant.

WILLKIE FARR & GALLAGHER,

Respondent.

Appellant's Reply and Rebuttal Brief

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND DEPARTMENT

CHARLES WIESNER, Plaintiff-Appellant, -against- SAMUEL ROTH, et al., Defendants.	:	Kings County Clerk's Index No. 7372/78
SAMUEL ROTH, Plaintiff, -against- ALEXANDER WIESNER, Defendant-Appellant.	:	Kings County Clerk's Index No. 25169/78
WILLKIE FARR & GALLAGHER, Respondent.	:	

APPELLANT'S REPLY AND REBUTTAL BRIEF

Respondent ignored appellant's cross motion and affidavits and the

arguments and demands for proof and accounting therein. Respondent continues to avoid the issues and makes conclusory, equivocal and misleading statements in its brief, neglecting the first duty of a lawyer -- meet the opponent's arguments.

In its so called, counter statement of facts, respondent alleges "During the late spring and the summer of 1979, respondent proceeded with pretrial proceedings and discovery in both the Wiesner action and the Roth action" (Rpdt's brief, page 3).

From the transcript of the aforesaid "pretrial proceedings and discovery" result egregiously that:

(a) respondent never represented appellant;

(b) respondent represented

appellant's adversaries;

(c) respondent actively worked against the interests of appellant by means of conspiracy, fraud and forgery, and deprived appellant of equal protection under the laws, of rights and privileges granted by the constitution and federal laws;

(d) there was no adversary in these proceedings, i.e., appellant was not represented by counsel.

For this reason appellant argued and demanded respectively with cross motion and affidavits in opposition (Record on Appeal, 34-45) that:

(a) respondent cannot be

relieved as appellant's counsel because it never was such;

(b) if respondent insists, in spite of appellant's denial, the "court order Griener and his firm to produce all acts they completed in these actions from which it result flagrantly whom they represent in fact, and whose counsel they are" (Record on Appeal, page 44, 2nd Paragraph).

It is for this same reason that respondent refused to produce as proof the aforesaid acts that were never filed in lower court.

It is for this same reason that respondent refuses to meet appellant's

arguments.

It is for this same reason that respondent and the lower court ignored appellant's cross motion and affidavits with the controlling facts therein.

It is for this same reason that respondent never billed appellant and refused to give an accounting, though according the retainer agreement signed by Stephen Griener, a partner at respondent lawfirm, respondent was to bill appellant monthly.

In fact, the aforesaid conspiracy, fraud and forgery is the work of Griener and his aide Benito Romano, but respondent is responsible for their acts. Evidently respondent cognizant of the conspiracy, fraud and forgery did not want to add to

the gravamen by billing appellant, and thereby openly aid and abet Griener in the crime, but cognizant they were and should have stopped Griener.

However, by letting Griener make a fraudulent and specious motion on respondent's behalf, to be relieved as appellant's attorneys, which they never were; by withholding fraudulently $ 10.000.00; by staging the procedure in the lower court and the subsequent order that ignore the cross motion, affidavits and the controlling facts therein, they staged the second procedure without adversary and added gravamen.

Respondent's statement, "that appellant has no desire to continue the attorney-client relationship is self-

evident" * (Rpdt's brief, page 6), is both spurious and misleading. For what is irrefutably self-evident is that a never existent representation can neither be "continued", nor be "terminated", as argued by appellant in lower court.

It is also more than evident that no "attorney-client relationship" commenced with the unilateral act of the $ 10.000.00 retainer given to respondent: such relationship would have eventually started with an act of respondent in representation of appellant, but as appellant already stated: "At no time did Griener and his firm act as our attorneys"

"At no time did Griener and

---

* underscoring added

his firm represent our interest"
"At no time did Griener and his
firm act as our counsel"

(Record on Appeal, page 43) thus, there never came into being any "attorney-client relationship", moreover, respondent ignored the repeated demands of appellant to prove there was an "attorney-client relationship", that they ever represented appellant. The court below erred in terminating a never existent representation, and a never existent attorney-client relationship.

With utmost caution respondent avoids all the issues in appellant's brief. Respondent does not dare to meet appellant's arguments. Respondent did not refute any of the facts listed in appellant's brief and those resulting from the record on appeal - which

are infamous and irrefutable.

CONCLUSION

THE ORDER BELOW SHOULD BE ANNULLED

Respectfully submitted

CHARLES M. WIESNER
Appellant Pro se
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Brooklyn, N.Y. 11219
(212) 851 8633

APPENDIX I

COURT OF APPEALS

STATE OF NEW YORK

CHARLES WIESNER,

Plaintiff-Appellant,

-against-

SAMUEL ROTH, ROMO PAPER PRODUCTS CORPORATION, and R & R REALTY CO.,

Defendants.

SAMUEL ROTH,

Plaintiff,

-against-

ALEXANDER WIESNER,

Defendant-Appellant.

WILLKIE FARR & GALLAGHER,

Respondents.

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO THE NEW YORK COURT OF APPEALS.

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

CHARLES M. WIESNER, being duly sworn, deposes and says:

1. I respectfully submit this affidavit in support of my motion for leave to appeal to the New York Court of Appeals from the order of the Appellate Division, Second Department, dated June 23, 1980, affirming, without opinion, the order of the Kings County Supreme Court, dated February 29, 1980, on grounds of fraud and intentional misrepresentation of respondents.

2. Service of a copy of the order

of the Appellate Division, Second Department, sought to be appealed from, with notice of entry was made on deponent the 10th day of July, 1980. No application for permission to appeal has been made to the Appellate Division.

3. With order of January 9, 1979, the Kings County Supreme Court ordered defendants Samuel Roth et al., to make full disclosure re. the financial affairs of Romo Corporation, its Employees' Retirement Plan, unexistent employees on Romo Corporation payroll, and a certain securities purchase by defendant Roth, and to produce the relative books, records and documents "not later than thirty days subsequent to service of the last amended pleading".

4. In late March 1979, deponent,

pro se, served upon counsel for defendants, C. DANIEL CHILL, the amended complaint.

5. On April 17, 1979, C. DANIEL CHILL, served upon deponent a pseudo "ANSWER TO AMENDED COMPLAINT", which in fact, was not an amended pleading as per order of the court, but a word per word copy of C. DANIEL CHILL'S original "ANSWER" of April 20, 1978.

6. On April 20, 1979, deponent retained Stephen W. Greiner ("Greiner") and his lawfirm Willkie Farr & Gallagher ("WF&G") as counsel. WF&G received a $ 10.000.00 retainer against fees and disbursements and were to bill deponent monthly as per agreement prepared and signed by Greiner.

7. On May 10, 1979, Greiner served upon counsel for adversaries, C. DANIEL

CHILL, a pseudo "REPLY TO AMENDED ANSWER", which in fact was not an amended pleading as per order of the Court, but a word per word copy of deponent's original "REPLY" of June 12, 1978. Moreover, there was no "Amended Answer".

8. On June 21, 1979, defendant Samuel Roth appeared in Kings County Supreme Court for his deposition, but did not produce, as per order of the Court, the books, records and documents, and Greiner, rather than seeking disclosure deterred and blocked it. However, defendant Roth blurted out a number of facts that confirmed alleged violations of federal and state laws.

9. Subsequently, Greiner and adversaries' counsel doctored Roth's statements from the transcript, added

statements of their own, and changed entire pages of Roth's "testimony". Greiner also forged the certificate and signature of the Court Reporter and Notary Public, Sharon D. Sobin, and attached it to the grossly doctored and forged transcript. The Court Reporters of Center Str. N.Y.C. who made the true transcript, and Sharon Sobin, the Court Reporter, admitted to deponent that the signature on the certificate is not that of Sharon Sobin.

10. On June 21, 1979, adversaries' counsel, C. DANIEL CHILL, was supposed to take deponent's and his father's deposition as per order of the Court. C. DANIEL CHILL in concert with WF&G deterred and blocked deponent and his father to make their depositions and intimidated and

harassed deponent's 85 year old father.

11. On July 9, 1979, defendant Roth appeared again in Kings County Supreme Court for his deposition. Again, Roth did not produce the books, records and documents as per order of the Court. Again, Greiner deterred and blocked disclosure. Again, Greiner and adversaries' counsel doctored from the transcript traces of statements by Roth that confirmed allegations of violations of federal and state laws. At any rate, from the order of the Kings County Supreme Court, dated January 9, 1979, and from the doctored and forged transcripts of the Roth depositions it is irrefutably documented that Greiner did not seek disclosure, Roth did not make disclosure and did not produce the books, records and documents as per order of the Court.

Stated differently, defendant Roth never complied with Court order of January 9, 1979, and was aided and abetted in contempt of court by deponent's alleged attorney, Greiner, who in fact at no time represented deponent, but his adversaries.

12. In early July, 1979, when adversaries' counsel, C. DANIEL CHILL, informed Greiner that deponent requested the assistance of U.S. Department of Labor re. the Retirement Plan fraud of defendant Roth, Greiner, upon instruction of adversaries' counsel, served a SUBPOENA DUCES TECUM upon Saul Seewald, accountant of Samuel Roth et al. (without deponent's knowledge), to appear on July 19, 1979, to give testimony re. the financial affairs of Romo Corp. and its Retirement Plan and to produce

the relative books, records and documents.

With a copy of this SUBPOENA DUCES TECUM, adversaries' counsel conned the U.S. Department of Labor that there is a "well advanced" state court action pending against the Retirement Plan, and that deponent was well represented by able and distinguished counsel, Stephen W. Greiner, a partner at Willkie Farr & Gallagher. The danger of U.S. Labor Dept. intervention over, Saul Seewald did not appear on July 19, 1979, nor thereafter. The SUBPOENA DUCES TECUM served its purpose.

13. When deponent confronted him with irrefutable documented proof Greiner admitted the forgeries, changed his own signature and wrote to deponent: "it is best for all

concerned if you retain new counsel in substitution for Willkie Farr & Gallagher".

14. Subsequently, with motion and affidavit of October 19, 1979, Greiner and WF&G sought to be relieved as deponent's attorneys. Greiner's spurious affidavit listed his aforementioned acts as done in deponent's representation. Greiner did not mention the $ 10.000 retainer, nor an accounting of it.

15. With cross motion and affidavits deponent rebutted that he retained Greiner and WF&G, gave them a $ 10.000.00 retainer, and they were to bill him monthly. But in fact, at no time did Greiner and WF&G represent deponent's interests, nor did they ever bill deponent (Record on Appeal, page 43). Accordingly, deponent

demanded that if WF&G insisted to be relieved as his attorneys, in spite of deponent's denial under oath they ever acted as such, the court should order them to produce proof, that is to produce those acts they claimed with affidavits in support were done in deponent's representation (Record on Appeal, pages 9-13), from which it results irrefutably whom they represent in fact, together with an accounting, and in the absence of proof and accounting, deny the motion and order the restitution of the $ 10.000.00 retainer with interest.

16. There is no question that in a bona fide adversary procedure deponent had the right to ask for proof, and the moving WF&G had to produce proof. Furthermore, in any case, in a bona fide adversary procedure deponent had

a right to ask for an accounting of the $ 10.000.00 retainer before WF&G withdrawal as "deponent's attorneys", and moving WF&G had to give an accounting, and a fortiori since the written agreement specified that deponent will be billed monthly, but in fact never was.

17. WF&G produced neither proof, nor an accounting. WF&G ignored deponent's demands made with cross motion and affidavit, and so did the subsequent order of the Kings County Supreme Court that granted the WF&G motion to be relieved as deponent's attorneys, irrespective whether WF&G ever were such.

Deponent appealed to the Appellate Division, Second Department, that affirmed, without opinion, the lower court order.

18. Therefore, four issues of law suggest that this Court should grant permission for appeal from the order of the Appellate Division, without opinion, and order of the Kings County Supreme Court:

1. Did the Kings County Supreme Court properly relieve respondents as appellants' attorneys without any proof they were such, when appellants denied with affidavits they ever represented them, and demanded proof?
2. Did the Kings County Supreme Court properly relieve respondents as appellants' attorneys without any accounting of the $ 10.000.00 retainer, when appellants denied under oath they ever represented them and

demanded an accounting, and when the written retainer agreement specified that appellant will be billed monthly, but in fact never was ?

3. Did the Kings County Supreme Court properly terminate a never existent representation ?

4. Did the Kings County Supreme Court act properly in ignoring the facts and the demands made with cross motion and affidavits, and in ignoring the very core of the controversy?

19. It is respectfully submitted that the aforementioned questions of law concerning fundamental constitutional rights of appellants to adversary procedure are sufficiently important

and have enough universal interest for this Court to grant leave to appeal.

20. Last, but not least, if egregious breach of fiduciary duty, and intentional misrepresention could be rendered profitable by lawfirms like Willkie Farr & Gallagher it would set a dangerous precedent that could not serve the interests of justice.

WHEREFORE, appellants pray for leave to appeal to this Court from the order of affirmance of the Appellate Division, Second Department, dated June 23, 1980, and for such other and further relief as to this Court may deem just and proper.

/s/ Charles M. Wiesner
Charles M. Wiesner

Sworn to before me this
22nd day of July, 1980

/s/ Thomas F. Carlo

Thomas F. Carlo
Notary Public, State of New York
No. 41-4706685
Qualified in Queens County
Term Expires March 30, 1981

COURT OF APPEALS

STATE OF NEW YORK

CHARLES M. WIESNER,

Plaintiff-Appellant,

-against-

SAMUEL ROTH, ROMO PAPER PRODUCTS CORPORATION, and R & R REALTY CO.,

Defendants.

SAMUEL ROTH,

Plaintiff,

-against-

ALEXANDER WIESNER,

Defendant-Appellant.

WILLKIE FARR & GALLAGHER,

RESPONDENTS.

APPELLANTS' BRIEF IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO THIS COURT

PRELIMINARY STATEMENT

Appellants respectfully submit this brief in support of their motion for leave to appeal to the New York Court of Appeals from the order dated June 23, 1980, of the Appellate Division Second Department, affirming the order of the Kings County Supreme Court.

ISSUES

1. Did the Kings County Supreme Court properly relieve respondents as appellants' attorneys without any proof they were such, when appellants denied with cross motion and affidavits they ever represented them, and demanded proof ?

2. Did the Kings County Supreme Court properly relieve respondents as

appellants' attorneys without any accounting of a $ 10.000.00 retainer, when appellants denied with affidavits they ever represented them and demanded an accounting, and when the written retainer agreement specified that appellant will be billed monthly, but in fact never was ?

3. Did the Kings County Supreme Court properly terminate a never existent representation ?

4. Did the Kings County Supreme Court act properly in ignoring the facts and the demands made with cross motion and affidavits, and in ignoring the very core of the controversy?

On April 20, 1979, Appellant retained respondents to represent him and his father in the above-captioned actions. Respondents received a $10.000.00 retainer against fees and

disbursements and were to bill appellant monthly as per written agreement prepared and signed by respondents.

In fact, at no time did respondents represent appellants, and at no time did respondents bill appellant. When caught in flagrant acts of breach of fiduciary duty and intentional misrepresentation respondents made a motion to be relieved as appellants' attorneys, which they never were. Respondents' affidavit in support of motion to be relieved as appellants' attorneys listed a number of acts allegedly done in appellants' representation. In fact, each of these acts were egregiously in the interests of appellants' adversaries as it irrefutably results from same acts.

With cross motion and affidavits appellant argued that at no time did respondents represent them, and if respondents insisted to be relieved as appellants' attorneys, in spite of appellants' denial they ever acted as such, the court should order them to produce proof together with an accounting (Record at 43), that is to produce those acts they claimed with affidavits in support were done in appellants' representation (Record at 9), from which it results irrefutably whom they represent in fact, and in the absence of proof and accounting deny the motion and order the restitution of the $ 10.000.00 retainer with interest.

Respondents ignored appellants' demands in their entirety, and so did the Kings County Supreme Court

that granted respondents' motion. Appellants appealed to the Appellate Division, Second Department, that affirmed the lower court order without opinion.

POINT ONE

RELIEVING RESPONDENTS AS APPELLANTS' ATTORNEYS WITHOUT PROOF THEY WERE SUCH, ESPECIALLY WHEN APPELLANTS DENIED WITH AFFIDAVITS THAT RESPONDENTS EVER REPRESENTED THEM, WAS ERROR OF LAW BY REASON OF ITS FAILURE TO FOLLOW ADVERSARY PROCEDURE.

As a matter of law it is irrefutable that the burden of proof was on moving respondents to prove they ever acted as appellants' attorneys, and especially so since appellants denied they ever acted as such and demanded proof.

The fact that respondents are

lawyers and appellants appeared pro se is no legal ground to deprive appellants of their fundamental constitutional rights of adversary procedure.

POINT TWO

RELIEVING RESPONDENTS AS APPELLANTS' ATTORNEYS WITHOUT AN ACCOUNTING OF A $ 10.000.00 RETAINER, ESPECIALLY WHEN APPELLANTS DENIED RESPONDENTS EVER REPRESENTED THEM AND DEMANDED AN ACCOUNTING, AND ESPECIALLY WHEN ACCORDING WRITTEN AGREEMENT RESPONDENTS WERE TO BILL APPELLANT MONTHLY, BUT NEVER DID, WAS ERROR OF LAW BY REASON THAT IT DEPRIVED APPELLANTS OF ADVERSARY PROCEDURE.

POINT THREE

TERMINATING A NEVER EXISTENT REPRESENTATION WAS FUNDAMENTAL ERROR OF LAW.

The fact, that respondents received a $ 10.000.00 retainer does not prove that respondents ever represented appellants.

POINT FOUR

IGNORING THE FACTS AND DEMANDS APPELLANTS MADE WITH CROSS MOTION AND AFFIDAVITS, AND NOT CONSIDERING THE CORE OF CONTROVERSY WAS FUNDAMENTAL ERROR OF LAW, BY REASON THAT IT DEPRIVED APPELLANTS OF ADVERSARY PROCEDURE.

Affirmance of the order of the Kings County Supreme Court without even an opinion, was clear error of law, calling for review by this Court and pronouncement for guidance of the Kings County Supreme Court, where such type of orders are made.

CONCLUSION

LEAVE TO APPEAL TO THE NEW YORK COURT OF APPEALS SHOULD BE GRANTED.

Respectfully submitted,

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Appellant, Pro Se
1440 54th Street
Brooklyn, N.Y. 11219
(212) 851 8633

APPENDIX J

WILLKIE FARR & GALLAGHER
One Citicorp Center
153 East 53rd Street
New York, N.Y. 10022

August 1, 1980

Hon. Joseph W. Bellacosa
Clerk
Court of Appeals of the State
of New York
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: Wiesner v. Roth, et al.

Dear Mr. Bellacosa:

Charles Wiesner, plaintiff-appellant in the above-captioned matter, has moved in the Court of Appeals for leave to appeal an order of the Supreme Court, Kings County, granting leave to respondent Willkie Farr & Gallagher to

withdraw as Mr. Wiesner's attorneys. Such order was affirmed without decision by the Appellate Division, Second Department. Pursuant to Court of Appeals Rule 500.9, I hereby submit for filing, in lieu of papers in opposition to Mr. Wiesner's motion, one copy of the brief filed by Willkie Farr & Gallagher in the Appellate Division.

Very truly yours,

/s/ Richard E. O'Connell

Richard E. O'Connell

REO'C:bs
Enclosure

cc: Mr. Charles Wiesner (w/enc.)

APPENDIX K

COURT OF APPEALS - STATE OF NEW YORK

CHARLES M. WIESNER, Appellant,

vs.

SAMUEL ROTH, et al Defendants.

SAMUEL ROTH, Plaintiff,

vs.

ALEXANDER WIESNER, Defendant.

WILLKIE FARR & GALLAGHER,

Respondent.

Mo. No. 875/1980

NOTICE OF APPEAL

Notice is hereby given that Charles M. Wiesner, Appellant above named, hereby appeals to the UNITED STATES SUPREME COURT from the order of dismissal entered in this action on the 4th day of September 1980.

Dated: Brooklyn, N.Y.
October 20, 1980

CHARLES M. WIESNER
Appellant, Pro Se

1440 54th Street
Brooklyn, N.Y.
(212) 851-8633

To:

WILLKIE FARR & GALLAGHER
Respondents, pro se
153 East 53rd Street
NEW YORK, N.Y. 10022
(212) 935-8000

I certify that copy of the foregoing Notice of Appeal has been mailed, postage prepaid, this 20th day of October, 1980, to Willkie Farr & Gallagher, respondents pro se, by certified mail.

Charles M.Wiesner

COURT OF APPEALS - STATE OF NEW YORK

----------x

CHARLES M. WIESNER, Appellant,

v.

Samuel Roth, et al. Defendants.

----------x

Samuel Roth, Plaintiff,

v.

Alexander Wiesner, Defendant.

----------x

WILLKIE FARR & GALLAGHER,

Respondent.

----------x

MO. No. 875/ 1980

AMENDED
NOTICE OF APPEAL

Notice is hereby given that Charles M. Wiesner, Appellant above named, hereby appeals to the UNITED STATES SUPREME COURT, under Amendments of the Constitution, from the order of dismissal entered in this action on the 4th day of September, 1980.

Dated: Brooklyn,N.Y. November 25,1980.

CHARLES M. WIESNER
Appellant, Pro Se
1440 54th Street
Brooklyn, N.Y. 11219
(212) 851-8633

To:
Willkie Farr & Gallagher
Respondents, Pro Se
153 East 53rd Street
New York, N.Y. 10022
(212) 935-8000

I certify that copy of the foregoing Amended Notice of Appeal has been mailed, postage prepaid, this 25th day of November, 1980, to Willkie Farr & Gallagher, Respondents, Pro Se.

Charles M. Wiesner